

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MOHAMMAD SAAILI SHIBIN,)
a/k/a "Khalif Ahmed Shibin,")
a/k/a "Mohammad Ali,")
a/k/a "Ali Jama,")
)
Defendant.)

CRIMINAL CASE NO.
2:11cr33

TRANSCRIPT OF PROCEEDINGS
(Rule 29 Motion)

Norfolk, Virginia
April 26, 2012

BEFORE: THE HONORABLE ROBERT G. DOUMAR,
United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
By: Joseph E. DePadilla, Esquire
Benjamin L. Hatch, Esquire
Brian J. Samuels, Esquire
Paul Casey, Esquire
Assistant United States Attorneys
Counsel for the United States

ZOBY & BROCCOLETTI, P.C.
By: James O. Broccoletti, Esquire
Counsel for the Defendant

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2 THE COURT: All right, Mr. Broccoletti, the ball is
3 in your court.

4 MR. BROCCOLETTI: Judge, on behalf of the defendant
5 we would move for judgment of acquittal with respect to
6 the -- I'm sorry.

7 (There was a pause in the proceedings.)

8 MR. BROCCOLETTI: -- move for judgment of acquittal
9 with respect to the count charging the defendant with piracy
10 of the Marida Marguerite. I'm not going to belabor the
11 issues. The Court said before -- we had submitted numerous
12 briefs to the Court. The Court withheld its motion -- or its
13 order in terms of our motion to dismiss this particular count
14 pending the evidence that was presented in the case.

15 The evidence that was presented clearly now
16 establishes that the defendant never went aboard the Marida
17 Marguerite while the boat was on the high seas. There is no
18 evidence, either, that the defendant had conspired or entered
19 into any agreement with any other coconspirator to aid,
20 assist, abet the acts of piracy or to engage in the
21 negotiations for the boat, the Marida Marguerite, prior to
22 the time the attackers went to sea.

23 Therefore, there's no evidence, number one, that the
24 defendant entered into the conspiracy before the attackers
25 left and at the time the boat was seized. Number two,

1 there's no evidence that the defendant was on the high seas
2 with the Marida Marguerite. The only evidence before the
3 Court is that the defendant boarded the boat approximately
4 seven to ten days after the boat was within the territorial
5 waters of Somalia.

6 Therefore, pursuant to the motions that we had
7 earlier filed -- and, again, I'm not going to argue the same
8 things we've gone over. The Court knows what the issues are.
9 Therefore, we would submit to the Court that the evidence is
10 insufficient under *United States v. Smith* and that piracy is
11 defined as robbery on the high seas. The defendant never
12 having been on the high seas, the defendant never having been
13 a conspirator prior to the time the boat was seized,
14 therefore cannot be guilty of piracy under that particular
15 count.

16 I'll address them one at a time or --

17 THE COURT: I think we better deal with them one at
18 a time.

19 MR. BROCCOLETTI: Yes, sir.

20 THE COURT: Otherwise, we'll be confused.

21 All right, Mr. Hatch. Do you desire to argue? I'm
22 more interested not in the questions that previously have
23 been decided; however, I want to deal with what
24 Mr. Broccoletti has now raised, and that is the question of
25 what evidence you feel would take this beyond the question so

1 that the jury can determine whether there's sufficient
2 evidence to go there. So tell me about it.

3 MR. HATCH: Yes, Your Honor. Well, first of all, I
4 would disagree with Mr. Broccoletti that the evidence doesn't
5 permit a reasonable jury to infer that this defendant was
6 part of this conspiracy while the boat was being seized out
7 on the high seas. The defendant's own statement was that
8 Farah -- which is, of course, another name for Hilaac -- who
9 seized that boat, as the evidence showed, was one of the
10 attack skiff members; that Farah/Hilaac called him to ask him
11 to be the negotiator for the seized ship. So I think the
12 jury can reasonably infer he was part of that conspiracy once
13 they seized the ship.

14 Mr. Broccoletti is certainly free to argue that that
15 may not have happened until he came back, but the evidence is
16 there. He came on board the ship shortly after it got to
17 Garaad, and the evidence also is that the defendant typically
18 resided in another part of Somalia, Galkayo, which is inland,
19 so it would make sense it would take him a couple of days to
20 get down to where the ship was. So I think there is
21 sufficient evidence to show his involvement at an early
22 stage.

23 Alternatively, however, I think that isn't legally
24 necessary or significant in the case, because we have argued,
25 really, under either of the competing definitions of piracy

1 this would meet it. Even under Mr. Broccoletti's narrow view
2 that it's only robbery at sea that certainly happened.

3 THE COURT: Well, he evidently -- there's testimony
4 that he was wearing the shirt of one of the people, and,
5 secondly, that he stole the computer.

6 MR. HATCH: Correct, and the --

7 THE COURT: So that was -- there isn't any question
8 in my mind about the robbery, because all you have to do --
9 even for common law robbery that would apply. However, he's
10 not charged with common law robbery, he's charged with
11 piracy.

12 The question necessarily is whether his actions
13 constituted piracy. Primarily, his actual actions almost all
14 took place within Somalian waters, other than whether he was
15 part and parcel of a group sharing the proceeds. The
16 question of being a partner and sharing proceeds makes every
17 partner responsible for the actions of every other partner in
18 furtherance of whatever the goal was.

19 Here the goal was to obtain ransom money -- or
20 money -- for the ships. I don't think there's much question
21 that you know that I don't think you have to be on board the
22 ship to commit robbery at the time it's done, because you can
23 commit it through other folks both by virtue of the
24 conspiracy statutes as well as by virtue of the aiding and
25 abetting statutes, both Sections 1 and 2 of Title 18, Section

1 2.

2 So I don't have much problem with it except that
3 there may be some weak evidence, Mr. Hatch, about the piracy.

4 MR. HATCH: Well, Your Honor, I would say that
5 the -- the only thing that -- you said robbery certainly
6 occurred here both by the defendant and by his
7 coconspirators. The only other element that's necessary,
8 even under the restricted definition, which, of course, we
9 don't agree with -- the only other element that's necessary
10 is that the crime at some point be committed on the high
11 seas. Clearly, here it was, and, as I think the Court
12 reasoned in the opinion it handed down the day before trial,
13 these are continuing offenses, and so once jurisdiction --

14 THE COURT: I feel like they are continuing
15 offenses.

16 MR. HATCH: -- once jurisdiction is attached the
17 defendant bears a responsibility for his participation in the
18 crime, at whatever point he joins it.

19 THE COURT: Okay, Mr. Hatch.

20 MR. HATCH: Thank you, Your Honor.

21 THE COURT: The motion is overruled,
22 Mr. Broccoletti. Let's don't waste time on that.

23 Let's go to the next motion.

24 MR. BROCCOLETTI: Judge, I would -- we had
25 previously filed with the Court and the Court has ruled on

1 all those other issues in terms of jurisdiction. I'm not
2 going to reargue those matters. I just want to note for the
3 record our continuing objection.

4 THE COURT: It's a continuing objection to that, and
5 those motions will be considered as if being made presently.

6 MR. BROCCOLETTI: Yes, sir.

7 THE COURT: Okay? So that way the legalities are
8 taken care of for the record.

9 MR. BROCCOLETTI: Yes, sir. We have no other
10 motions to make.

11 THE COURT: Do you desire to argue, Mr. Hatch?

12 MR. HATCH: Your Honor has already ruled on all of
13 the issues, so I have nothing further to say.

14 THE COURT: Well, the same ruling would apply,
15 Mr. Hatch, okay?

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CERTIFICATION

I certify that the foregoing is a correct excerpt
from the record of proceedings in the above-entitled matter.

s/s

Heidi L. Jeffreys

May 9, 2012

Date

Heidi L. Jeffreys, Official Court Reporter